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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,923	07/10/2001	Paul S. Enfield	P113836	9260
22931 7590 10/09/2008 HUGHES LAW FIRM, PLLC PACIFIC MERIDIAN PLAZA, SUITE 302 4164 MERIDIAN STREET BELLINGHAM, WA 98226-5583			EXAMINER GORT, ELAINE L	
			ART UNIT 3687	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/902,923

Applicant(s)

ENFIELD, PAUL S.

Examiner

Elaine Gort

Art Unit

3687

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-8 and 10-27 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 and 10-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C2)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 5-8, and 10-16 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 12/26/06.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 17-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramey (US Patent 5,297,685) in view of Begum et al. (US Patent 6,012,244), Porter ("The influence of brand recognition...") and Examiner's Official Notice.**

Ramey discloses the claimed combination of a plurality of display signs and a store facility (such as the display signs shown in figures 1-7 used in self-service stores disclosed in column 1 lines 38+ that contain "bulk commodities such as moulding and the like"), with the combination being particularly adapted to assist customers to locate products in the store facility and to obtain greater familiarity of an overall pattern of product location in the store facility, said combination comprising:

a) a store facility having a shopping area in which store products are made available to customers in the shopping area, said shopping area being arranged in a plurality of elongate aisles having first and second aisle end portions (for example figure 6 discloses an example of an aisle in the store);

b) a substantial portion of the store products located in the aisles being *related products* (for example the products in the self-service store would be related products as the products would be hardware and where said store products are categorized as:

i) products in a plurality of primary location related product categories with the products in each primary location related product category being in a related primary location area of the shopping area (for example the primary location could be moulding, or it could be construed to be a type of moulding, any categorization would apply);

ii) products in each primary location related product category which are in turn classified in a plurality of secondary location related product categories (for example if the primary location is defined as moulding the secondary location could be construed to be any type of moulding as shown in figure 7. If the primary location is defined as a type of moulding, such as base moulding, the secondary location could be construed to be, for example, single cut or double cut base moulding.), with the products in each secondary location related product category being in a related secondary location area (for example different types of base moulding are located together, for example in the same aisle or section of the aisle. Figure 6, for example, shows the moulding in one aisle and specific types of moulding located in sections of the aisle or in "secondary locations" broken down by these parts of the aisle);

- iii) products in at least some of said secondary location related product categories being in subcategories of a related one of the secondary location related product categories (For example if the secondary location is defined as the type of moulding, or base moulding, a sub category may be construed to include the different types of base moulding such as single or double cut moulding that is related to other moulding that is single or double cut, such as single or double cut window moulding. For example if the secondary location is defined as single or double cut base moulding a sub category may be construed to include wood or composite and therefore the moulding is related to all other moulding that is wood or composite);
- c) a substantial portion of products located in each of the aisles being location related to other products in that aisle as location related products in a manner that one location related product at a particular location in an aisle would indicate a probability of other products that are location related to said one location related product would be in that aisle and as a possibility in closer proximity to said one location related product (for example figure 6 discloses an aisle with related products as they are all moulding, base moulding indicates a probability of other types of moulding as they are commonly accepted to be together);
- d) a plurality of display signs, each of which is located in, or proximate to, a related aisle, or positioned so as to be associated with said related aisle in a manner that each display sign is visible so that a shopper observing the sign is able to associate the sign with its related aisle and the products within that aisle (the disclosed self-serve store of column 1 lines 38+ has signs such as ones shown in figure 6 throughout the store to

identify moulding or like bulk product locations);

e) each of said display signs having a plurality of different product representations of products which are representative of other location related products in its related secondary location related product category or categories or subcategory or subcategories in its related aisle, with the product representations that are on the display sign being representative of a greater number of other products which are in the aisle associated with that display sign so as to be present along a substantial length of the aisle, and which are not on the display sign and are generally associated by location with the product representations that are on the display sign, said product representations on that display sign having an overall product appearance including and/or graphic representations and provided in at least one group in proximity or overlapping relationship to one another (for example figure 7 discloses a display sign, present along a substantial length of the aisle, having a plurality of pictures grouped in at least one group in proximity or overlapping relationship to one another of different moulding products that are representative of the greater number of other products in the aisle and other moulding products in the moulding, type of moulding, single or double cut, and wood or composite locations or subcategories); and,

f) the number of product representations in the display signs being at most a relatively small fraction of the number of location related products in the aisle that is associated with that display sign (For example Figure 7's product representations of one or two base mouldings and window mouldings is only a small fraction of the moulding related products in the aisle associated with the sign), with a substantial portion of the product

representations on the display sign having a direct relationship to the product which it shows and an indirect relationship as being location related to other products in that aisle (For example, the picture of base moulding has a direct relationship to all base moulding in the aisle while it shows an indirect relationship to chair rail moulding located in that aisle while still being location related as it is moulding); and

g) the display signs being positioned at a substantial number of said aisles so that a customer in the shopping area would be able to observe the display signs and associate with each display sign and its related aisle the more numerous various location related products (For example in the self-service store there would be signs positioned above aisles containing moulding, as shown in figure 7's example and other bulk commodity aisles within the store);

whereby a customer is able to observe individual display signs and by observing a much smaller number of product representations on each display sign to be able to obtain location information of not only the products which are the same as the product representations on the display sign, but also of a substantially greater number of related products which are in that aisle and of which the displayed product representations are representative, and also the customer is able to become more familiar with product locations in the aisles by means of the customer associating the display signs as a memory aid of aisle locations (customers seeing the pictures of the product, such as base moulding, locate the base moulding in the picture and also all of the moulding in the aisle which the picture represents. This allows the customer to become familiar with product locations via the signs as a memory aid for aisle locations);

But is silent regarding:

Under b) where the store products located in the aisles include brand name products which comprise one or more of frozen food products, refrigerated food products, food products which are canned, bottled or packaged food products and drug store products;

Under iv) where a substantial portion of the products in the primary location related product categories are brand name products with an overall brand name product appearance including the brand name and any packaging and/or graphic representations; and

Under e) where the pictures on the signs include brand name product representations having an overall brand name product appearance including the brand name and any packaging with a substantial portion comprising trademarks which are registered in the U.S. Patent and Trademark Office.

Begum et al. teaches, for example in Figure 1, that it is old and well known in the art of retail for stores to sell grocery products that have overall brand name product appearances including brand names and any packaging and/or graphic representations and to use pictures on signs that include brand name product representations having an overall brand name product appearance including the brand name and any packaging with a benefit being to sell grocery items that consumers recognize and favor. Figure 1 shows a grocery item, orange juice, 14 and related sign having an overall brand name appearance including the name ACME and packaging including the orange juice

container with a graphic representation including the orange with leaves and special fonts for "ACME FLA Orange Juice". Therefore it would have been obvious to one of ordinary skill in the art of retail to modify the signs and store facility of Ramey to sell grocery products with brand names, brand appearance, brand graphic representation and brand packaging as taught by Begum et al. in order to sell grocery items that consumers recognize and favor.

Porter teaches, in the abstract, that it is old and well known in the art of grocery stores for a substantial portion of the products in the primary location related product categories to be brand name products to have a store have a favorable store image. For example the second to last sentence of the abstract discusses that stores can ensure a favorable image by having a merchandise mix composed of a relatively high number of brands with high and strong brand images. Therefore it would have been obvious to one of ordinary skill in the art of retail to modify the signs and store facility of Ramey and Begum et al., as modified above, to include a substantial portion of the products with brand name products as taught by Porter in order to have a strong store image.

Examiner takes Official Notice that it is notoriously old and well known in the art of grocery retail for grocery items to include brand name products which comprise one or more of frozen food products, refrigerated food products, food products which are canned, bottled or packaged food products and drug store products and where these brand names and packaging comprise trademarks with are registered in the U.S. Patent and Trademark Office to sell a wide array of foods and drugs and to provide companies

with brand name protection. Therefore it would have been obvious to one of ordinary skill in the art to modify the combination of display signs and store facility of Ramey and Begum et al., as modified above, to include brand name products which comprise one or more of frozen food products, refrigerated food products, food products which are canned, bottled or packaged food products and drug store products and where these brand names and packaging comprise trademarks which are registered in the U.S. Patent and Trademark Office as taught by Examiner's Official Notice in order to sell a wide array of foods and drugs and to provide companies with brand name protection.

Regarding claim 18, further comprising at least one store directory which is visible to customers in the shopping area (figure 4 of Ramey discloses a store directory), said store directory listing identifying names of products (such as lists "windows"), with some of the identifying names also having a product representation which is within the scope of the names of the products listed in the directory but is silent regarding the representations having brand names. Begum et al. further teaches, for example in Figure 1, that it is old and well known in the art of retail for stores to use pictures on signs that include brand name product representations having an overall brand name product appearance including the brand name and any packaging with a benefit being to sell grocery items that consumers recognize and favor. Figure 1 shows a grocery item, orange juice, 14 and related sign having an overall brand name appearance including the name ACME and packaging including the orange juice container with a

graphic representation including the orange with leaves and special fonts for "ACME FLA Orange Juice".

Therefore it would have been obvious to one of ordinary skill in the art of retail to modify the signs and store facility of Ramey, Begum et al. and Examiner's Official Notice, as modified above, with the brand name product representations as taught by Begum et al. order to sell grocery items that consumers recognize and favor. For example it would be obvious to modify the directory sign of Ramey's Figure 4 to show pictures of brand name grocery items instead of trim mouldings.

Regarding claims 19, 20, 21 , the signs and store facility of Ramey, Begum et al. and Examiner's Official Notice, as modified above for claim 18, is silent regarding the use of a display direction sign indicating a direction to a store location or locations. Examiner takes Official Notice that it is notoriously old and well known in the art of signs and maps to show direction to allow individuals to locate places. Therefore it would have been obvious to one of ordinary skill in the art of signs and mapping to modify the signs and store facility of Ramey, Begum et al. and Examiner's Official Notice, as modified above for claim 19, with direction indication as taught by Examiner's Official Notice order to show direction to individuals wishing to locate places. For example it would be obvious to modify the directory sign of Ramey's Figure 4 to have directions to find desired grocery items. This could be done with a map, using aisle numbers or arrows. Examiner also notes that it would have been obvious to make the sign or map a printed matter so as to be portable.

Regarding claim 22, Ramey discloses category signs, for example see sign near “E” in Figure 7 at spaced locations along at least some of said aisles displaying product representations which are more specific to product categories at said spaced locations along at-least some of said aisles. Examiner notes that the images have been modified above to include trademarked item images.

Regarding claim 23, wherein at least one aisle for frozen products are present and located in freezers cabinets. Examiner notes that the store products of Ramey have been modified to include grocery items that are frozen, therefore would be located in an aisle with freezers.

Regarding claim 24, where products include drug store products, and said category signs are at spaced locations in a section of the shopping area where the drug store related products are located. Examiner notes that the store products have been modified above to include grocery items that are drugs and would be located in an aisle with other drugs or drug store related goods.

Regarding claim 25, where the display signs have in addition to the brand name product representations a word or words identifying products and/or categories of products at that related aisle combination (for example, Ramey discloses in figure 7

words like Mouldings or Window or door in addition to product representations). Note that the product images have been modified above to include trademarked item images.

Regarding claim 26, wherein said store facility has existing display signs at access regions which display a word or words identifying products and/or categories of products at the access region and the display signs with the brand name product representations are in addition to the word or words that are displayed (for example, Ramey discloses a directory in figure 4 located at an entrance. Examiner notes that the images in the directory have been modified above to include trademarked images.)

Regarding claim 27, where there are other display signs in the shopping area which display text identifying products and/or product categories, and these are in addition to said display signs with the brand name product representations (for example these "other" display signs could be the signs shown by "E" in figure 6).

Response to Arguments

4. Applicant's arguments filed 7/11/08 have been fully considered but they are not persuasive.

Applicant has argued that none of the applied documents describe, imply, suggest or even hint at providing a plurality of different brand name product representations on a sign, as claimed.

Examiner respectfully disagrees, Figure 7 of Ramey clearly discloses providing a plurality of different product representations on a sign, and Begum et al. figure 1 clearly teaches that it is old and well known in the art of point of retail sales advertising to use brand name product representations (such as the "brand name representation" of the Acme orange juice container with the ACME orange on it) on point of sales signage for advertising purposes, therefore it would have been obvious for one of ordinary skill in the art of retail sales advertising to replace the different product representations on the signs of Ramey with brand name product representations taught by Begum with the motivation being advertising to sell grocery items that consumers recognize and favor.

Examiner notes that Begum has been used to modify the sign of Ramey figure 7 to apply to grocery items, for example instead of saying "window and Door" and "Corner and Ceiling" it may say "Juice" and "Softdrinks"; additionally, instead of the trim representations, the representations on the side of the sign would be replaced with name brand product representations for grocery items sold in this aisle, which may include the Acme orange juice bottle with the orange on it, the well recognized coke bottle, the Orangina bottle with logo...as examples. Begum is used to teach that product representations can include brand name recognition to promote brand name products, therefore it would be obvious, since there are multiple product representations on the Ramey sign, that there be multiple brand name product representations on a sign.

Applicant argues that Ramey is directed to an indexing system in which every single piece of moulding in an aisle is identified, and that modifying the described

Ramey system as suggested by the Office would completely frustrate the principle operation of the Ramey system. Examiner notes that the Ramey indexing system is elaborate and goes beyond the sign of figure 7 in order to index every single piece of moulding, but the sign of figure 7 does not show every single piece of moulding, only select representations.

Examiner has given full consideration to the Declarations filed 7/17/08 and 7/11/08, and 9/15/06 under 37 C.F.R. 1.132 by Paul Einfield and David Weber and finds they do not show clear evidence of unexpected results and are insufficient to overcome the rejection of claims as set forth in the last Office actions because: the study on which these declarations are based were not included and thus are unsupported by evidence. Examiner notes that increased sales for the store and the brand name products advertised may be linked to many other variables outside the specifically claimed signage within the store, such as local population increases, elimination of competing stores, changes in accessibility to the store, change in demographics of customers, changes in all advertising, change in customers economical standing, and the amount of the increase in brand name sales has not been proven to exceed well known targeted point of sale advertising (such as simply displaying a "coke" ad above an isle) and are thus not proven to be unexpected results.

Applicant argues that the mere fact that a retail store would have a large number of brands says nothing regarding the claimed features of a display sign provided with a plurality of different brand name representations in at least one group in proximity or overlapping relationship to one another, with these brand name representations being

representative of a greater number of other products that are in the aisle associate with the display sign so as to be present along a substantial length of the aisle. Examiner notes that the modified sign of Ramey and Begum having for example the Acme orange juice and the Coke brand name representations on it have overlapping relationships, such as drinks, and are representative of a greater number of other products that are in the aisle associated with the display sign, such as they represent all other types of Coke products like Diet Coke or Sprite and all other types of orange juice as these items are sold in the same area.

Applicant argues that Begum fails to reasonably suggest selecting "ACME FLA Orange Juice" as the sign display for the given product group based on its brand name recognition and does not hint at a display sign provided with a plurality of different brand name representations in at least one group in proximity or overlapping relationship to one another.

Examiner notes that Begum was not used to teach what the Applicant has stated but has been used to modify the sign of Ramey figure 7 to apply to grocery items, for example instead of saying "window and Door" and "Corner and Ceiling" it may say "Juice" and "Softdrinks"; additionally, instead of the trim representations, the representations on the side of the sign would be replaced with name brand product representations for grocery items sold in this aisle, which may include the Acme orange juice bottle with the orange on it, and for some other examples the well recognized coke bottle, the Orangina bottle with logo. Begum is used to teach that product representations can include brand name recognition to promote brand name products,

therefore it would be obvious, since there are multiple product representations on the Ramey sign, that there be multiple brand name product representations on a sign.

Examiner further notes that Ramey already discloses selecting representations for a display sign having at least one group in proximity or overlapping relationship to one another such as by showing base trim and chair rail.

In response to applicant's argument that Begum et al. is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Begum et al. is in the same field of applicant's endeavor as it applies to point of sale advertising, more specifically signage located where the products are selected from the store. The fact that the Begum sign is small and located on the price rail is irrelevant as it is merely being used to teach that product representations can include brand name product representations in order to promote the specific brand name product. One way to look at the modification, as an example, is to imagine having a brand name for the trim shown in figure 7 of Ramey on the image of the trim. For example it could say "TrimCo" on the image of the base trim in figure 7 and it could say "ACME Co" on the window trim image in figure 7. But all these items are modified to be grocery items as Begum also teaches selling grocery items in a store.

Conclusion

5. This is a RCE of applicant's earlier Application No. 09/902923. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is 571/272-6781. The examiner can normally be reached on Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Gart can be reached on 571/272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elaine Gort/
Primary Examiner, Art Unit 3687

October 3, 2008